



INTERGOVERNMENTAL AGREEMENT
BETWEEN
ARIZONA DEPARTMENT OF HEALTH SERVICES (ADHS)
AND
THE NAVAJO NATION (TRIBAL CONTRACTOR)
FOR
BEHAVIORAL HEALTH SERVICES

Intergovernmental Agreement No. HG532004

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year as outlined on the previous page.

Navajo Nation (Tribal Contractor)

Signature

Joe Shirley, Jr.

Typed Name

President . The Navajo Nation

Title

June 23, 2004

Date

In accordance with the Tribal Contractor's governing tribal laws, this Agreement has been reviewed by the undersigned who has determined that this Agreement is in the appropriate form and is within the power and authority granted to the Tribal Contractor.

Dated this _____ day of _____, 2004

Attorney General for the Tribal Contractor

Secretary of State filing information:

Arizona Department of Health Services (ADHS)

Signature

Typed Name

Title

Date

In accordance with A.R.S. §11-952, this Agreement has been reviewed by the undersigned who has determined that this Agreement is in the appropriate form and is within the power and authority granted to ADHS under A.R.S. §§ 36-104, 36-3401 et seq.

Dated this 24th day of June, 2004

Assistant Attorney General for ADHS

KR#04-0895 EHS

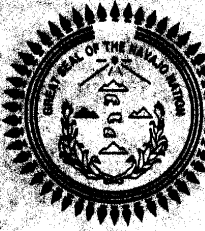
NO. 26934

Filed with the Secretary of State

Date Filed: 06/29/04

Janice K. Shivers
Secretary of State

By: [Signature] [Name]



**NAVAJO NATION DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL**

LOUIS DENETSOSIE
ATTORNEY GENERAL

Contract No. HG532004

THIS AGREEMENT HAS BEEN REVIEWED, THIS 23rd DAY OF June, 2004, BY THE UNDERSIGNED WHO HAS DETERMINED THAT THIS AGREEMENT IS IN APPROPRIATE FORM AND WITHIN THE POWERS AND AUTHORITY GRANTED TO EACH RESPECTIVE PUBLIC BODY.

Louis Denetsosie

Louis Denetsosie, Attorney General
Office of the Attorney General

June 23, 2004
Date

TERMS AND CONDITIONS

WHEREAS the ADHS is duly authorized to execute and administer agreements under Arizona Revised Statutes Sections 36-104, 36-3401 et seq; and

WHEREAS the Tribal Contractor is duly authorized to execute and administer agreements under Navajo Nation governing laws; and

WHEREAS the ADHS and the Tribal Contractor are authorized by A.R.S. § 36-104, 36-3401 et seq and the Tribal Contractor's Navajo Nation governing laws to enter into agreements for the joint exercise of any power common to the contracting parties as to governmental functions necessary to the public health, safety and welfare, and the proprietary functions of such public agencies;

WHEREAS, the ADHS and the Tribal Contractor endeavor to provide accessible, timely behavioral health services tailored to the person and family in accordance with best practices, provided in the most appropriate setting, designed in collaboration with the person, family and others to achieve functional outcomes; and

WHEREAS the ADHS desires that the Tribal Contractor provide case management services and the Tribal Contractor has agreed to provide case management services pursuant to the terms and conditions contained herein;

THEREFORE the ADHS and the Tribal Contractor agree as follows:

Definition of Terms

"Action" means the denial or limited authorization of a requested service including the type or level of service; the reduction, suspension, or termination of a previously authorized service; the denial in whole or in part of payment for service; the failure to provide services in a timely manner; the failure to act within established timeframes for resolving an appeal or grievance and providing notice to affected parties; or for an enrolled person in a rural area the denial of the enrolled person's request to obtain services outside the network.

"ADES" means the Arizona Department of Economic Security.

"ADHS" means the Arizona Department of Health Services.

"AHCCCS" means the Arizona Health Care Cost Containment System.

"AHCCCS PMMIS" means the Arizona Health Care Cost Containment System Prepaid Medical Management Information System.

"AHCCCS SSI-MAO" means the Arizona Health Care Cost Containment System Supplemental Security Income - Medical Assistance Only.

"Agreement" means the Intergovernmental Agreement between the Arizona Department of Health Services and the Navajo Nation.

"Amendment" means a written document signed by ADHS that is issued for the purpose of making changes in the Agreement, as agreed to by the Navajo Nation Tribal Contractor.

"Appeal" means a request for a review of an action in accordance with 42 CFR 438.400, and for a person with a serious mental illness, an appeal of an SMI eligibility determination; decisions regarding eligibility for behavioral health services, including Title XIX/XXI services, fees, and waivers; assessments and further evaluations; service and treatment plans and planning decisions; and the implementation of those decisions.

"Behavioral Health Services" means those services listed in the ADHS Behavioral Health Covered Services Guide.

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“Case Management” means the process through which the most appropriate and cost effective type, amount and duration of behavioral health services are identified, obtained and monitored for the individual eligible for covered services. The process integrates the enrolled person's and the case manager's review of the person's strengths and needs resulting in the mutually agreed upon appropriate and cost effective service plan that meets the behavioral health needs of the persons and his/her family.

“CIS” means the Client Information System.

“CMS” means the Centers for Medicare and Medicaid Services.

“Complaint” means any expression of dissatisfaction with behavioral health services other than an appeal.

“Covered Services” means those services listed in the ADHS Covered Behavioral Health Services Guide.

“DBHS” means the Division of Behavioral Health Services within the Arizona Department of Health Services.

“Enrolled Person” means a Title XIX, Title XXI or Non-Title XIX/XXI eligible person recorded in the ADHS Client Information System as specified by ADHS.

“Enrollment” means the process by which a person is enrolled into the ADHS Client Information System.

“Level I Behavioral Health Facility” means a behavioral health agency as defined in A.A.C. Title 9, Chapter 20.

“Level II Behavioral Health Facility” means a behavioral health agency as defined in A.A.C. Title 9, Chapter 20.

“Materials” means all property including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.

“Medically Necessary Covered Services” means those covered services provided by qualified service providers within their scope of practice to prevent disease, disability, and other adverse health conditions or their progression or to prolong life.

“Non-Title XIX/XXI Person” means an individual who needs or may be at risk of needing covered services, but does not meet Federal and State requirements for Title XIX or Title XXI eligibility.

“Non-Title XIX/XXI Funds” means fixed, non-capitated funds, including funds from Community Mental Health Services (CMHS) and Substance Abuse Prevention and Treatment (SAPT), State appropriations (other than state appropriations to support the Title XIX and Title XXI program); counties and other funds, which are used for services to Non-Title XIX/XXI eligible persons and for services not covered by Title XIX or Title XXI provided to Title XIX and Title XXI eligible persons.

“Party” or “Parties” means the Arizona Department of Health Services or the Navajo Nation.

“Provider” means an organization or behavioral health professional that provides behavioral health services to enrolled persons.

“Quality Management” means a methodology used by professional health personnel that assesses the degree of conformance to desired medical standards and practices; and activities designed to improve and maintain quality service and care, performed through a formal program, with involvement of multiple organizational components and committees.

“Serious Mental Illness” means a condition of persons who are eighteen years of age or older and who, as a result of a mental disorder as defined in A.R.S. 36-501, exhibit emotional or behavioral functioning which is so impaired as to interfere substantially with their capacity to remain in the community without supportive treatment or service of a long term or indefinite duration. In these persons mental disability is severe and persistent, resulting in long term

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limitation of their functional capacities for primary activities of daily living such as interpersonal relationships, homemaking, self-care, employment and recreation.

“Service Plan” means a written description of the covered behavioral health services and other informal supports that have been identified through the assessment process that will assist the person to meet her/her personal goals.

“SMI Grievance” means a written grievance regarding an act, omission, condition or violation of a right of an individual with a serious mental illness.

“State” means the State of Arizona or the agency responsible for implementing this Agreement, the Arizona Department of Health Services.

“Title XIX” means Title XIX of the Social Security Act, as amended. This is the Federal statute authorizing Medicaid which is administered by AHCCCS.

“Title XXI” means Title XXI of the Social Security Act, referred to in federal legislation as the Children’s Health Insurance Program (CHIP). The Arizona version of CHIP is referred to as KidsCare and is administered by AHCCCS.

“Tribal Contractor” means the Navajo Nation.

“Utilization Review” means a methodology used by professional health personnel that assesses the medical indications, appropriateness and efficiency of care and services provided.

TERMS AND CONDITIONS

I. Terms and Conditions

A. Interpretation of the Agreement

1. *Arizona Law.* Where applicable, Arizona law applies to this Agreement.
2. *Severability.* The provisions of this Agreement are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Agreement.
3. *No Waiver.* Either party's failure to insist on strict performance of any term or condition of the Agreement shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.
4. *Entire Agreement.* This Agreement shall constitute the entire Agreement between the parties, and supersedes all other previous understandings, oral or written.
5. *No Parol Evidence.* This Agreement is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.

B. Administration and Operation of the Agreement

1. *Records and Audit.* Under A.R.S. § 35-214 and § 35-215, the Tribal Contractor shall retain all data and other records relating to the acquisition and performance of the Agreement for a period of five years after the completion of the Agreement. All records related to pending litigation shall be retained until the litigation is completed. All records shall be subject to inspection, copying and audit by the State at reasonable times. Upon request, the Tribal Contractor shall produce a legible copy of any or all such records.
2. *Non-Discrimination.* Where applicable, the Tribal Contractor shall comply with the Indian Civil Rights Act of 1968. Where applicable, the Tribal Contractor shall comply with Title VII of the Civil Rights Act of 1964, as amended; the Age Discrimination in Employment Act; and Federal and State Executive Orders numbers 11246 and 99-4, respectively, which mandate that all persons, regardless of race, color, religion, sex, age, national origin or political affiliation, shall have equal access to employment opportunities. Where applicable, the Tribal Contractor shall comply with the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities Act of 1992 which prohibit discrimination in the employment or advancement in employment of qualified persons because of physical or mental handicap/disability. Where applicable, the Tribal Contractor shall comply with Title VI of the Civil Rights Act of 1964, which prohibits the denial of benefits of, or participation in, covered services on the basis of race, color, or national origin. Where applicable, the Tribal Contractor shall comply with the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans With Disabilities Act of 1992 which prohibit discrimination on the basis of handicap/disability, in providing covered services.
3. *Notices.*

Notices required in this Agreement from ADHS to the Tribal Contractor shall be made to:

Name: Mr. Herman Largo, Department Manager III

Address: Department of Behavioral Health Services
The Navajo Nation
P.O. Drawer 709
Window Rock, Arizona 86515

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Notices required in this Agreement from the Tribal Contractor to ADHS shall be made to:

Name: Leslie Schwalbe, Deputy Director
Address: Arizona Department of Health Services
Division of Behavioral Health Services
150 N. 18th Avenue Suite 200
Phoenix Arizona 85007-3240

4. *Request for Information.* The ADHS may, at any time during the term of the Agreement, request financial or other information from the Tribal Contractor. Upon receipt of such request for information, the Tribal Contractor shall provide complete information as requested no later than thirty (30) days after the receipt of the request unless, otherwise specified in the request itself.

5. *Qualified Staff.* The Tribal Contractor shall maintain sufficient qualified staff to perform Agreement terms, conditions, and scope of work.

C. Agreement Changes

1. *Amendments.* The ADHS and the Tribal Contractor may re-negotiate any provision(s) of this Agreement. Any change to this Agreement shall be carried out in accordance with the following: A written amendment signed by both parties to this Agreement shall be required whenever there is a change in a reimbursement rate negotiated by the ADHS and the Tribal Contractor; whenever there is a change in services provided under this Agreement, the service provision methodology or the level of service as defined in the Scope of Work; or for any other change in the terms and conditions in this Agreement which the ADHS deems substantial. When the ADHS issues an amendment to modify the Agreement, the provisions of such amendment shall be deemed to have been accepted sixty (60) days after the date of certified mailing by the ADHS, even if the amendment has not been signed by the Tribal Contractor, unless within that time the Tribal Contractor notifies the ADHS in writing that it refuses to sign the amendment.

2. *Assignment and Delegation.* The Tribal Contractor shall not assign any right nor delegate any duty under this Agreement without the prior written approval of the ADHS. The Agreement is voidable and subject to immediate cancellation by the ADHS upon the Tribal Contractor assigning rights or obligations under the Agreement without prior written approval of the ADHS.

D. Risks and Liability

1. *Insurance.* Each party is self-insured and is responsible for its own negligence. The Tribal Contractor at the execution of this Agreement and when the certificate is renewed shall submit a complete and valid certificate of insurance to ADHS.

2. *Indemnification.* Neither party to this Agreement agrees to indemnify the other party or hold harmless the other party from liability. However, if the common law or a statute provides for either a right to indemnify and/or a right to contribution to any party to this Agreement, then the right to pursue one or both of these remedies is preserved.

3. *Force Majeure.*

- a. Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Agreement if and to the extent that such party's performance of this Agreement is prevented by reason of force majeure. The term "force majeure" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-interventions-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.

TERMS AND CONDITIONS

- b. If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so.
- c. Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.

E. Warranties

1. *Compliance With Applicable Laws.* The ADHS and the Tribal Contractor shall comply with all applicable Federal, Tribal, and State laws, rules, regulations, standards, and Executive orders without limitation to those designated herein. Applicable laws and regulations of the Tribe, State and Federal government shall govern the rights of the parties with respect to the performance hereunder. If any provision herein is held invalid or unenforceable, the remaining provisions shall continue valid and enforceable to the full extent permitted by law.

F. State's Remedies

1. If the Tribal Contractor violates any provision stated in applicable Tribal, Federal and State laws, rules and regulations, ADHS policies and procedures, or this Agreement, the ADHS may refuse to renew, or terminate this Agreement in accordance with the terms of this Agreement and applicable law.

2. If the ADHS in good faith has reason to believe that the Tribal Contractor does not intend to, or is unable to perform or continue performing under this Agreement, the ADHS may demand in writing that the Tribal Contractor give a written assurance of intent to perform. Failure by the Tribal Contractor to provide written assurance within the number of days specified in the demand may, at the ADHS' option, be the basis for terminating the Agreement or other rights and remedies available by law or provided by the Agreement.

3. The ADHS shall be entitled to offset against any sums due the Tribal Contractor, any expenses or costs incurred by the ADHS, or damages assessed by the ADHS concerning the Tribal Contractor's non-conforming performance or failure to perform the Agreement.

G. Agreement Termination.

1. This Agreement may be terminated without cause upon sixty (60) days written notice by either party during the term of this Agreement or may be terminated pursuant to a subsequent superseding agreement between the parties. The ADHS has the right to terminate this Agreement upon twenty-four (24 hour) notice when the ADHS deems that the health, welfare or safety of enrolled persons is endangered. The State may cancel this Agreement as provided in A.R.S. § 38-511.

2. In the event the Agreement is terminated for any reason, or expires, the Tribal Contractor shall assist ADHS in the transition of its enrolled persons to other contractors. In addition, ADHS reserves the right to extend the term of the Agreement on a month-to-month basis to assist in any transition of enrolled persons. The Tribal Contractor shall continue to provide all necessary services until the transition of all enrolled persons is completed and all other requirements of this Agreement are satisfied. The Tribal Contractor shall be responsible for providing all reports set forth in this Agreement and necessary for the transition process and shall be responsible for the notification to enrolled persons.

3. The Dispute provisions of this Agreement shall exclusively govern any dispute with respect to termination of this Agreement.

4. Any funds, advanced to Tribal Contractor for coverage of enrolled persons for periods after the date of termination, shall be returned to ADHS within 30 days of termination of the Agreement.

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H. Disputes

1. *Informal Resolution.* Whenever a dispute arises regarding the existence, construction, validity, interpretation or meaning, performance, non-performance, enforcement, operation, breach, continuance, or termination of this Agreement, the parties shall attempt to first resolve the dispute informally at an administrative level prior to resorting to arbitration.

2. *Arbitration.* In the event a dispute cannot be resolved informally at an administrative level, either party may request that the dispute be arbitrated pursuant to this procedure set forth herein. Although consent to arbitration under this Agreement shall not be deemed a waiver of either party's sovereign immunity, neither party shall assert sovereign immunity as a defense to arbitration under this Agreement.

a. Procedure

- 1) Either party may demand such arbitration in writing, which demand shall include the name of the arbitrator appointed by the party demanding arbitration, together with a statement of the matter of controversy.
- 2) Within twenty (20) days after such demand, the other party shall name its arbitrator, or in default of such naming, such arbitrator shall be named by the American Arbitration Association, and the two arbitrators so selected shall name a third arbitrator within twenty (20) days or, in lieu of such agreement on a third arbitrator by the two arbitrators so appointed, a third arbitrator shall be appointed by the Federal District Court for the District of Arizona. In the event said Court fails to appoint a third arbitrator within thirty (30) days of the request therefore, the appointment shall be made by the American Arbitration Association.
- 3) The arbitration costs and expenses of each party shall be borne by that party and all arbitrators' fees and other expenses shall be borne equally by both parties.
- 4) The arbitration hearing shall be held at such time and place as designated by the arbitrators on at least twenty (20) days written notice to the parties.
- 5) An award rendered by a majority of the arbitrators appointed pursuant to this Agreement shall be final and binding on all parties to the proceeding, and the parties hereto agree to be bound by such award.
- 6) As to any procedures regarding the conduct of the arbitration that are not specified either in this Agreement or in another written agreement signed in advance of the hearing, the parties shall follow the Commercial Arbitration Rules of the American Arbitration Association.

b. Arbitration as Bar to Suit

- 1) The parties stipulate that the arbitration provisions of the Agreement shall be a complete defense to any suit, action, or proceeding instituted in any Federal, State, or Tribal Court or before an administrative tribunal with respect to any controversy or dispute arising during the period of this Agreement and which is arbitrable as set forth in this Agreement.
- 2) The arbitration provisions of this Agreement shall, with respect to such controversy or dispute, survive the termination or expiration of this Agreement.

- c. Nothing contained in this Agreement shall be deemed to give the arbitrators any authority, power, right to alter, change, amend, modify, add to, or subtract from any of the provisions of this Agreement.

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d. Enforcement

- 1) Failure by either party to arbitrate any dispute pursuant to the procedure set forth herein when a demand to do so has been made by the other party shall amount to the material breach of this Agreement and shall entitle the party who demanded arbitration to cease performance of any obligation set forth in this Agreement at the sole discretion of that party.
- 2) Failure of either party to comply with an arbitration award shall amount to the material breach of this Agreement and shall entitle the other party to cease performance of any obligation set forth in this Agreement.
- 3) Disputes resolved through the arbitration process are not subject to enforcement under the Uniform Arbitration Act.

I. Term of Agreement

1. *Term of Agreement.* The term of this Agreement shall commence on the date signed by the Secretary of State and shall remain in effect for a period of three (3) years, beginning July 1, 2004 and ending June 30, 2007, unless terminated, canceled, renewed or extended as otherwise provided herein.

2. *Agreement Renewal.* The Tribal Contractor agrees that the ADHS and the Tribal Contractor shall have the right to renew the Agreement annually for up to two (2) one year periods or a portion thereof. In the event that this right is exercised, all terms, conditions and provisions of the original agreement shall remain the same and apply during the renewal period unless modified through an amendment.

J. Other Provisions

1. *Dissemination of Information.* Upon request, the Tribal Contractor shall assist ADHS in the dissemination of information prepared by the ADHS or the Federal government, to its enrolled persons. All advertisements, publications and printed materials that are produced by the Tribal Contractor and refer to covered services shall state that such services are funded under Agreement with ADHS and AHCCCS.

2. *Certification of Compliance - Anti-kickback.* By signing this Agreement, the Tribal Contractor certifies that it has not engaged in any violation of the Medicare Anti-Kickback statute (42 USC 132a-7b) or the "Stark I" and "Stark II" laws governing related-entity referrals (PL 101-239 and PL 101-432) and compensation therefrom.

3. *Disclosure of Confidential Information.* The Tribal Contractor shall observe and abide by all applicable State, Tribal, and Federal statutes and regulations regarding use or disclosure of information, including, but not limited to, information concerning enrolled persons or applicants for covered services.

4. *Ownership of Property.*

a. Information and Data

- 1) Any materials, including reports, computer programs and other deliverables, created under this Agreement are the sole property of the State. The Tribal Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Tribal Contractor shall not use or release these materials without the prior written consent of the ADHS.
- 2) The Tribal Contractor agrees to give recognition to the ADHS for its support of the program when publishing program material or releasing program related public information.
- 3) In recognition of tribal sovereignty, publication or release of any of the Tribal Contractor's specific reports and data shall be subject to the Tribal Contractor's review and approval.

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- b. Any property, personal or intellectual, created under this Agreement or purchased with funds provided under the Agreement, are the sole property of the State. Upon the termination or expiration of this Agreement, all property created or purchased using funds provided under the Agreement shall be promptly transferred to the ADHS, and the Tribal Contractor shall promptly execute any documents necessary to transfer title to such property.
- 5. *Accreditation/Credentialing.* The Tribal Contractor shall provide covered services in accordance with any and all applicable professional accreditation standards. The Tribal Contractor shall obtain and maintain all applicable licenses, permits and authority required to provide covered services.
- 6. *Fingerprint and certification requirements/juvenile services.* The fingerprint and certification requirements listed in this section apply to this Agreement to the extent it pertains to services to juveniles.
 - a. The Tribal Contractor shall ensure that all paid and unpaid personnel who are required or are allowed to provide services directly to juveniles have met all fingerprint and certification requirements of A.R.S. §36-425.03 prior to providing such services.
 - b. The Tribal Contractor shall ensure and verify that those employees who qualify only for a restricted certification shall be supervised when providing services directly to juveniles.

SCOPE OF WORK

II. Scope of Work

A. Service Delivery.

Case Management:

In accordance with the ADHS/DBHS (Arizona Department of Health Services/Division of Behavioral Health Services) Covered Services Guide, the Tribal Contractor shall provide medically necessary case management services.

Case Management Services shall consist of the following:

1. Arranging for and ensuring an initial assessment of the referred person within 7 days of the date the person was referred.
2. Arranging for and ensuring ongoing covered behavioral health services to be provided within 23 days of the initial assessment date.
3. Working in collaboration with the enrolled person and his/her family or significant others to develop, implement, review and revise an effective service plan.
4. Overseeing the provision of covered behavioral health services as identified on the service plan including continuous evaluation of the effectiveness of the services and suitability of any placement through ongoing assessment of the enrolled person, input from the enrolled person and other relevant persons, and direct observation and analysis of the services rendered by any provider to which the Tribal Contractor has referred the enrolled person.
5. Serving as the point of contact for coordination and communication with other systems including where clinical knowledge of the case is important.
6. Referring the enrolled person to medical services as clinically indicated, including emergency medical services.
7. Arranging for covered behavioral health crisis services.
8. Assisting the enrolled person to exercise his/her rights and to file a complaint, grievance or member appeal.
9. Facilitating decision making regarding the enrolled person's behavioral health care including:
 - a. Arranging for assessments and treatment recommendations to be completed in collaboration with the enrolled person, his/her family and with clinical input from a clinician who is either a behavioral health professional or a behavioral health technician working under the supervision of a behavioral health professional.
 - b. Identifying qualified AHCCCS registered providers that will accept the ADHS/DBHS Covered Services Fee For Service Rate, to provide services to the person in order to carry out the enrolled person's service plan.
 - c. For enrolled persons referred for or identified as needing ongoing psychotropic medications for a behavioral health condition, ensuring the review of the initial assessment and treatment recommendations by a licensed medical practitioner with prescribing privileges.
 - d. Coordinating with Level I facilities the writing and submission to ADHS/DBHS of the certification and recertification of need.

SCOPE OF WORK

- e. For planned admissions to services subject to prior authorization, notifying ADHS/DBHS of the planned admission and coordinating the submission to ADHS/DBHS of required documents and records.
- f. Coordinating care and services to assure continuity of care: between inpatient and outpatient settings, between physical and behavioral health services, in the event of out-of-area or out-of-state placements, and among other individuals or entities involved in the delivery of services.
- g. Continuously engaging the enrolled person, family and significant others in meeting the behavioral health needs of the enrolled person, including active participation in decision-making.
- h. Collaborating and communicating with other individuals or entities with whom delivery and coordination of covered behavioral health services is important to achieve positive outcomes.
- i. Developing and implementing transition, discharge or aftercare plans prior to discontinuation of case management services.
- j. Ensuring complete, accurate and timely entry of enrollment/disenrollment data into the ADHS Client Information System and claims data into the AHCCCS PMMIS.
- k. Ensuring complete, accurate and timely documentation of services provided by the Tribal Contractor including those functions listed above.

General Provisions:

The Tribal Contractor shall obtain written prior approval from the ADHS/DBHS before referring an enrolled person outside of Arizona for service provision.

The Tribal Contractor must, to the extent possible and appropriate, allow enrolled persons to choose their behavioral health provider(s).

The Tribal Contractor shall be accessible by toll free phone number for general information requests from enrolled persons during normal business hours.

Upon an enrolled person's request, the Tribal Contractor must provide for a second opinion from a qualified health care professional at no cost to the enrolled person. A qualified health professional is a provider who meets the qualifications to be an AHCCCS registered provider of behavioral health services and who is a physician, a physician assistant, a nurse practitioner, a psychologist or an independent Master's level therapist.

On-reservation providers that deliver covered behavioral health services must be certified by CMS and registered with AHCCCS. Off-reservation providers that deliver covered behavioral health services must be either licensed by the ADHS Office of Behavioral Health Licensure or Title XIX Certified by the ADHS/DBHS, operating within their scope of practice, and registered with AHCCCS. If only providing services to Non-Title XIX/XXI eligible persons, the off-reservation provider must be either licensed by the ADHS Office of Behavioral Health Licensure or Title XIX Certified by the ADHS/DBHS, operating within their scope of practice and registered with ADHS/DBHS.

SCOPE OF WORK

B. Administrative Functions.

i. Eligibility and Scope of Services.

The Tribal Contractor shall verify the Title XIX or Title XXI eligibility of persons referred for or requesting covered behavioral health services in accordance with the requirements of the Navajo Nation Clinical Operations Manual and the ADHS/DBHS Program Support Procedures Manual.

At or prior to enrollment and at least annually, the Tribal Contractor shall determine potential eligibility, based on family size and income, for entitlements. If the enrolled person is identified as potentially eligible, the Tribal Contractor shall assist the person in completing the AHCCCS Universal application and submitting it to the ADES or AHCCCS SSI-MAO.

The Tribal Contractor shall be responsible for the provision of medically necessary case management services by practitioners within their scope of practice to all AHCCCS Title XIX and Title XXI eligible/enrolled children and adults and Non-Title XIX/XXI eligible/enrolled children and adults in accordance with all applicable Federal and State laws, rules, and regulations. The Tribal Contractor shall ensure that medically necessary case management services are sufficient in amount, duration or scope to reasonably be expected to achieve the purpose for which the services are furnished. Medically necessary case management services must be related to the enrolled person's ability: to achieve age-appropriate growth and development; to attain, maintain or regain functional status; and are sufficient in amount or scope to reasonably be expected to achieve the purpose for which the services are furnished.

The Tribal Contractor shall use Non-Title XIX/XXI funding, subject to availability, to deliver Non-Title XIX/XXI covered behavioral health services to Non-Title XIX/XXI enrolled persons and to Title XIX/XXI enrolled persons for Non-Title XIX/XXI covered services.

ii. Enrollment and Disenrollment.

Persons who are affiliated with the Tribal Contractor by virtue of being Federally-recognized Tribal members, and who live on the Tribal Contractor's reservation and who are assessed as needing covered behavioral health services shall be enrolled with the ADHS/DBHS by the Tribal Contractor to receive covered behavioral health services.

The Tribal Contractor shall, in accordance with the Navajo Nation Clinical Operations Manual and the ADHS/DBHS Program Support Procedures Manual, enroll all eligible persons who receive covered behavioral health services in the ADHS/DBHS Client Information System within 14 days of the date the first covered behavioral health service is delivered.

The Tribal Contractor shall disenroll enrolled persons in accordance with the Navajo Nation Clinical Operations Manual and the ADHS/DBHS Program Support Procedures Manual.

iii. Member Information/Materials and Member Rights

The Tribal Contractor shall provide interpreters of any language, free of charge, to the enrolled person, to ensure appropriate delivery of services. The Tribal Contractor shall provide enrolled persons with information instructing them how to access interpreter services and shall arrange for interpreter services.

SCOPE OF WORK

The ADHS/DBHS shall provide a Member Handbook template to the Tribal Contractor. The Tribal Contractor shall insert Tribal specific information into the Member Handbook template that details information specific to the Tribal Contractor's operations. The Tribal Contractor shall distribute the Member Handbook to each enrolled person within ten (10) days of the enrollment date.

Additional informational material intended for distribution to enrolled persons, and prepared by the Tribal Contractor, shall be approved by the ADHS/DBHS, in writing, prior to distribution to enrolled persons.

iv. Complaints, Grievances, Member Appeals and Provider Appeals.

ADHS/DBHS shall provide the appropriate personnel to establish, implement and maintain the necessary functions of the SMI Grievance, Member Appeal and Provider Appeal processes. The Tribal Contractor shall provide the appropriate personnel to establish, implement and maintain the necessary functions of the complaint process for enrolled persons.

The Tribal Contractor shall endeavor to informally resolve complaints whenever possible; however, the Tribal Contractor shall not prohibit or interfere with an enrolled person's or provider's right to use the grievance and appeal processes.

The Tribal Contractor shall have in place a complaint process for members in accordance with all applicable tribal, state and federal laws including but not limited to 42 CFR 438.1 et seq, 45 CFR parts 160 –164, 42 CFR 431.200 et seq., 42 CFR 456.200 et seq., A.A.C. R9-22-518 (A), R9-22-802, R9-22-804, R9-21 Article 4, and ADHS/DBHS Policies and Procedures, the Navajo Nation Clinical Operations Manual and the ADHS/DBHS Member Handbook template.

v. Quality Management.

The Tribal Contractor shall make available records and other documentation, participate in and cooperate with the ADHS/DBHS and its subcontracted External Quality Review Organization during the conduct of the annual Independent Case Review (ICR).

The Tribal Contractor shall report mortalities, incidents, and seclusion and restraints for enrolled persons in accordance with ADHS/DBHS Policies and Procedures, the ADHS/DBHS Quality Improvement Project, and the Navajo Nation Clinical Operations Manual.

The Tribal Contractor shall provide clinical supervision, training and technical assistance to its personnel based, in part, on ADHS' or the Tribal Contractor's monitoring findings and corrective actions.

ADHS and the Tribal Contractor shall develop and implement a Biennial Satisfaction Survey that accommodates the people, the culture and the geography of the Navajo Nation.

vi. Utilization Management.

Prior authorization shall be performed in accordance with the Navajo Nation Clinical Operations Manual and the ADHS/DBHS Policies and Procedures.

The Tribal Contractor shall comply with federal utilization control requirements, including certification of need and recertification of need for continued stay in inpatient settings.

SCOPE OF WORK

In accordance with the Navajo Nation Clinical Operations Manual, the Tribal Contractor shall review Medical Care Evaluation Studies conducted by inpatient facilities, including inpatient hospitals and mental hospitals that have served Tribal Contractor enrolled persons. The Medical Care Evaluation Studies shall meet the requirements of 42 CFR Part 456 Subparts C and D, the ADHS/DBHS Policies and Procedures, and the Navajo Nation Clinical Operations Manual.

vii. Corporate Compliance

The Tribal Contractor shall guard against fraud and abuse and shall:

- a. Participate in the ADHS/DBHS Corporate Compliance Committee,
- b. Participate in fraud and abuse training, and
- c. Provide prompt responses to detected fraud and abuse problems.

The Tribal Contractor shall, within ten days of discovery, inform the ADHS/DBHS Office of Program Support and the AHCCCS Office of Program Integrity in writing of instances of suspected fraud and abuse. This shall include acts of suspected fraud or abuse that were resolved internally but involved AHCCCS funds, ADHS, the Tribal Contractor or any provider that is providing services to Tribal Contractor enrolled persons. The Tribal Contractor shall maintain a record of all reported cases of suspected fraud and abuse.

viii. Data Submission.

The Tribal Contractor shall be responsible for computer terminal hardware and data communication equipment enabling the Tribal Contractor to access and submit relevant ADHS/DBHS data. At the Tribal Contractor's request, the ADHS/DBHS will provide technical assistance with regard to the data communication equipment.

The Tribal Contractor shall comply with the provisions of the CIS File Layout Specifications Manual, the Navajo Nation Clinical Operations Manual, and the ADHS/DBHS Program Support Procedures Manual, including provisions for enrollment, disenrollment and demographic data submission.

ix. Corrective Action.

The Tribal Contractor shall implement corrective action to bring performance into compliance with ADHS/DBHS requirements, in accordance with the corrective action plan and timelines agreed to by the Tribal Contractor and the ADHS/DBHS. The ADHS/DBHS and the Tribal Contractor will develop corrective action plans collaboratively. In addition to any other remedies available to ADHS, the ADHS may impose financial sanctions against the Tribal Contractor for breaches of the Agreement by the Tribal Contractor.

FINANCIAL PROVISIONS

III. FINANCIAL PROVISIONS

A. FUNDING

1. The Tribal Contractor shall be compensated for case management services on a monthly fee-for-service bundled rate basis. The monthly fee-for-service bundled rate is \$131.96 for fiscal year 2005. When ADHS/DBHS receives six months of revenue and expense financial information and six consecutive months of claims data, if the information and data indicates the monthly fee-for-service bundled rate should be considered for adjustment, the ADHS/DBHS may perform a rate study to determine if an adjustment to the rate is needed.
2. Case management services shall be billed monthly as claims pursuant to *Section III.C. Billings* below, using appropriate codes.
3. Payments shall be made by the ADHS/DBHS to the Tribal Contractor in compliance with A.R.S. Titles 35 and 41. Payments are conditioned upon the rights and obligations of this Agreement and the availability to the ADHS/DBHS of funds authorized and appropriated by the State legislature for expenditure in the manner and for the purposes stated in this Agreement. The ADHS/DBHS or the State shall not be liable for any purchase(s) entered into by the Tribal Contractor in anticipation of such funding.
4. Federal Financial Participation is not available for amounts expended for providers excluded by Medicare, Title XIX, or Title XXI, except for emergency services.
5. Title XIX/XXI Administrative Revenues. Subject to available funding, ADHS shall pay the Tribal Contractor Title XIX/XXI Administrative funds in 12 monthly installments annually. These funds will be used to pay for the administration of the programs in this Agreement. ADHS reserves the right to re-evaluate this schedule periodically. If at the time of the re-evaluation, the Tribal Contractor has not expended at least 88% of the administrative funds advanced in any particular allocation, ADHS may, at its discretion, reduce the amount of remaining fiscal year allocations to match estimated expenditures.
6. Non Title XIX/XXI funds. The Non-Title XIX/XXI Allocation Schedule outlines the specific funding sources by program. Subject to available funding, the ADHS shall pay the Tribal Contractor Non-Title XIX/XXI funds in 12 monthly installments annually. These funds will be used for delivery of services for the programs outlined in the ADHS Non-Title XIX/XXI Allocation Schedule to Non-Title XIX/XXI eligible populations and to provide Non-Title XIX/XXI services to Title XIX/XXI eligible persons. ADHS/DBHS reserves the right to re-evaluate this schedule periodically. If at the time of the re-evaluation the Tribal Contractor has not expended at least 88% of the Non-Title XIX/XXI funds funds advanced in any particular allocation, ADHS/DBHS may, at its discretion, reduce the remaining amount of remaining fiscal year allocations to match estimated expenditures. Non-Title XIX/XXI funds funds shall be paid on a monthly basis not later than the 10th working day of each month.
7. Payments made by the ADHS/DBHS to the Tribal Contractor pursuant to the Agreement are conditioned upon the availability to the ADHS/DBHS of funds authorized for expenditure in the manner and for the purposes provided herein. Neither the ADHS/DBHS nor the Tribal Contractor shall be liable for any purchases in anticipation of funding.
8. Payments made by the ADHS/DBHS to the Tribal Contractor are conditioned upon receipt by the ADHS/DBHS of applicable timely, accurate and complete reports, documentation, claims, and any other information due from the Tribal Contractor, unless written approval waiving such requirement(s) is obtained from the ADHS/DBHS Deputy Director. If the Tribal Contractor is in any matter in default in the performance of any material obligation under the Agreement, or if financial, compliance or performance audit exceptions are identified, the ADHS/DBHS may, at its option and in addition to other available remedies, either adjust the amount of payment or withhold payment until satisfactory resolution of the default or exception. The Tribal Contractor shall have the right to 30 days written notice of the ADHS/DBHS' action in adjusting the amount of payment or

FINANCIAL PROVISIONS

withholding payment. Under no circumstances shall the ADHS/DBHS authorize payments that exceed an amount specified in the Agreement without an approved written amendment to the Agreement. The ADHS/DBHS may, at its option, withhold final payment to the Tribal Contractor until all final reports and deliverables are received.

9. The practices, procedures and standards specified in and required by the *Accounting and Auditing Procedures Manual for Arizona Department of Health Services Funded Programs* and any Uniform Financial Reporting Requirements, as applicable to this Agreement, shall be used by the Tribal Contractor in the management, recording and reporting of Agreement funds by the ADHS/DBHS when performing an Agreement audit.
10. Funding received through this contract shall be retained by the Tribal Contractor to be used for covered behavioral health services. All funding received under this contract, must be maintained in a separate fund (account). The Tribal Contractor should provide ADHS/DBHS with a quarterly report detailing all activities in this fund (account). Any funds remaining subsequent to fiscal year end shall be used in accordance with this contract within 60 days. For funds not expended within 60 days after fiscal year end, the Tribal Contractor shall present a plan for ADHS/DBHS' approval describing its plan to utilize remaining funds within 180 days of fiscal year end. The following year's revenue may be adjusted if the Tribal Contractor does not provide a reasonable plan to spend remaining funds.
11. The Tribal Contractor shall reimburse the ADHS/DBHS upon request, or the ADHS/DBHS may deduct from future payments to the Tribal Contractor, any amounts determined by the ADHS/DBHS to represent:
 - a. Costs related to Agreement services which have been inaccurately reported by the Tribal Contractor;
 - b. Costs related to Agreement services which have not been provided;
 - c. Costs of Agreement services for which the Tribal Contractor's books, records, and other documents are not sufficient to clearly confirm were used by the Tribal Contractor to provide Agreement services;
 - d. Costs of Agreement services sustained as a financial audit exception;
 - e. Costs of services which have not been provided in accordance with applicable regulations, laws, policies and this Agreement, to include services which the ADHS/DBHS or AHCCCS has determined not medically necessary; or
 - f. Payments recouped from ADHS/DBHS by AHCCCS or the Federal government as they relate to funds disbursed related to this contract.
12. Federal Funds:

All transfers involving Federal funds shall be in accordance with the Federal Funds Transfers, Cash Management Improvement Act of 1990 and any rules or regulations promulgated by the United States Department of the Treasury thereunder (Rule 31 CFR. Part 205).

B. FINANCIAL INFORMATION AND FINANCIAL REPORTING MEASURES

1. The Tribal Contractor shall have a system to produce complete, timely, reliable and accurate financial records in accordance with the following requirements for financial reporting:
 - a. The Tribal Contractor shall design and implement its financial operations system to ensure compliance with Generally Accepted Accounting Principles.
 - b. The Tribal Contractor is required to submit an audited (by an Independent Certified Public Accountant) Statement of Activities with supplemental schedules no later than 6 months after state fiscal year end for activities related to Agreement funding.
 - c. The Tribal Contractor shall file a quarterly report detailing the Title XIX and Title XXI ADHS/DBHS Administrative Income and Expenses, Title XIX and

FINANCIAL PROVISIONS

Title XXI Service Revenues and Expenditures, and Non-Title XIX/XXI Revenues and Expenditures.

- d. The Tribal Contractor shall submit a Certification Statement as outlined in the ADHS/DBHS Financial Reporting Guide.
 - e. The Tribal Contractor is required to submit audited Financial Statements prepared in accordance with OMB Circular A-133 for Navajo Nation within 9 months after the Tribal Contractor's fiscal year.
2. Requests for extension of reporting deadlines shall be submitted in writing and must be received by the ADHS/DBHS prior to the report due date. Approvals for extension are valid only if issued in writing by the ADHS/DBHS.

C. BILLING

1. Billings:
- a. Claims shall be submitted to AHCCCS in accordance with the AHCCCS Fee For Service Manual, the AHCCCS Fee For Service Manual for Native American Services and the Navajo Nation Clinical Operations Manual.
 - b. Except for co-payments and sums payable by Third Party Payors under coordination of benefits provisions, the Tribal Contractor shall not charge or receive any payment from a Title XIX or Title XXI enrolled person for Title XIX or Title XXI covered services. Further, the Tribal Contractor shall not bill an enrolled person for services or items other than covered services unless the enrolled person or his or her guardian or conservator has previously agreed in writing to make payment.

2. Review/Denial:

Each billing by the Tribal Contractor shall be subject to denial in the event and to the extent such billing is incomplete, does not conform to the applicable service authorization or to the Agreement, or is otherwise incorrect. Any denied billing shall be returned by AHCCCS or the fiscal agent to the Tribal Contractor with an explanation for the denial, which includes a notice of the right to appeal the denial. Nothing shall prevent a Tribal Contractor from re-submitting a denied billing at a later date. Specific timeframes are outlined in the Navajo Nation Clinical Operations Manual, the AHCCCS Fee For Service Manual and the AHCCCS Fee For Service for Native Americans.

3. Provisional Nature of Payments:

All payments to the Tribal Contractor shall be provisional and shall be subject to review and audit for their conformity with requirements in the ADHS/DBHS Program Support Procedures Manual, the Navajo Nation Clinical Operations Manual, the AHCCCS Fee For Service Manual, the AHCCCS Fee For Service Manual for Native American Services and the provisions hereof.

4. Health Insurance Portability and Accountability Act (HIPAA):

Where applicable, the Tribal Contractor shall comply with the Administrative Simplification requirements of Subpart F of the HIPAA of 1996 (Public Law 107-191, 110 Statutes 1936) and all Federal regulations implementing the Subparts that are applicable to the operations of the Tribal Contractor by the dates required by the implementing federal regulations.

ATTACHMENT A

TRIBAL CONTRACTOR CHART OF DELIVERABLES

The following table is a summary of the periodic reporting requirements for the Tribal Contractor and is subject to change at any time during the term of the Agreement. The table is presented for convenience only and should not be construed to limit the Tribal Contractor's responsibilities in any manner.

REPORT	WHEN DUE	SOURCE/REFERENCE	ADHS CONTACT
Audited Statement of Activities with Supplemental Schedules	No later than 6 months after state fiscal year end	IGA	Office of Financial Review
Audited Financial Statement per OMB Circular A-133 for Navajo Nation	No later than 9 months after the Tribal Contractor's fiscal year end	IGA	Office of Financial Review
Quarterly report detailing the Title XIX/XXI Administrative Income and Expenses, Title XIX and Title XXI Revenues and Expenditures, and Non-Title XIX /XXI Revenues and Expenditures	Quarterly, 45 days after quarter end	ADHS/DBHS Financial Reporting Guide	Office of Financial Review
Certification Statement	Quarterly, 45 days after quarter end	ADHS/DBHS Financial Reporting Guide	Office of Financial Review
Incidents of Potential Fraud or Abuse	Due As Occurring	IGA	Office of Program Support Services
Complete and Valid Certificate of Insurance	Prior to agreement execution and when certificate is renewed	IGA	Office of Financial Review
Medical Care Evaluation: Study Results	Annually, by September 1	IGA	Bureau of Quality Management and Evaluation
Study Methodology for upcoming year	October 1		
Incidents involving Enrolled Persons	Within 24 hours of being notified of the incident	IGA Navajo Nation Clinical Operations Manual	Bureau of Quality Management and Evaluation
Monthly Seclusion and Restraint Summary Report	Monthly, by the 10th, for the prior month	ADHS/DBHS Policy and Procedure 2.4 Reporting and Monitoring the Use of Seclusion and Restraint	Bureau of Quality Management and Evaluation
Seclusion and Restraint Individual Reports	Within 7 days of Tribal Contractor's receipt of facility report	ADHS/DBHS Policy and Procedure 2.4 Reporting and Monitoring the Use of Seclusion and Restraint	Bureau of Quality Management and Evaluation
SMI Mortality Report	Within 15 days following Incident Report	A.R.S. Title 9 Chapter 21	Bureau of Quality Management and Evaluation
Data and Records Related to Agreement	Due Upon Request	IGA	Bureau of Quality Management and Evaluation
Corrective Action Plans	Due Upon Request	IGA	As indicated in Corrective Action Plan request letter